

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

EQUINOX F&B, INC.

Plaintiff,

v.

ROOTS PRESSED JUICES LLC

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

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**DEFENDANT’S NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES, Roots Pressed Juices LLC (“Roots” or “Defendant”), Defendant herein, pursuant to 28 U.S.C. §§ 1441 and 1446, and gives notice that it hereby removes the case styled *Equinox F&B, Inc. v. Roots Pressed Juices LLC*, Index No. 656484/2021, filed in The Supreme Court of the State of New York, County of New York (the “State Court Action”). As grounds for removal, the Defendant respectfully states the following:

**I. The State Court Action.**

1. The State Court Action arises out of a dispute concerning Roots’ operation and management of five health food and juice bar cafes within five “Equinox Fitness Club” branded health clubs located in Texas.

2. On November 12, 2021, Plaintiff Equinox F&B, Inc. (“Equinox”) initiated the State Court Action by filing its Complaint in The Supreme Court of the State of New York, County of New York.

3. In its Complaint, Plaintiff seeks relief for an alleged breach of contract and seeks to recover “significant damages...punitive damages, legal fees, costs, expenses, interest...” and such other reliefs as it proves itself entitled. *See* Comp., Ex. B-1, ¶35.

4. Attached hereto as Exhibits B-1 through B-3 are copies of the process and pleadings outlining the proceedings that have taken place in the State Court Action.

## **II. Requirements for Removal**

5. In accordance with 28 U.S.C. § 1446(a), Roots attaches the following to its Notice of Removal:

Exhibit A: Index of all matters filed in the State Court Action that clearly identifies each document and indicates the date the document was filed.

Exhibit B: Copies of all process and pleadings in the State Court Action, individually marked in order of filing from B-1 through B-3.

6. Plaintiff filed the State Court Action on November 12, 2021. Defendant Roots was served with a copy of the Complaint and Summons on December 29, 2021. Consequently, this Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b) as it is filed within 30 days after the receipt of the Complaint by the Defendant.

7. As set forth in more detail below, this Court would have original jurisdiction of this matter based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Except as otherwise expressly provided by Act of Congress, any civil action brought in the state court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is pending. *See* 28 U.S.C. § 1441. The Southern District of New York is the United States District and Division embracing New York County, New York, the county in which the State Court Action is pending. *See* 28 U.S.C. §112(b).

8. As required by 28 U.S.C. §1446(d), Roots, the removing party, will promptly file a copy of this Notice of Removal with The Supreme Court of the State of New York, County of New York, where the State Court Action is currently pending.

**III. This Court has Jurisdiction Based on Diversity of Citizenship.**

9. The district courts of the United States have original jurisdiction over this action because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs. 28 U.S.C. § 1332(a).

**A. Complete Diversity of Citizenship Between the Parties.**

10. Plaintiff Equinox is a Delaware corporation with its principal place of business situated in the County of New York, and State of New York. *See* Comp., Ex. B-1, ¶1. Therefore, Equinox is a citizen of the State of Delaware and New York for diversity purposes. 28 U.S.C. §1332(c)(1).

11. Defendant Roots is a Texas limited liability company with its principal place of business in Texas. *See* Comp., Ex. B-1, ¶2. Therefore, Roots is a citizen of the State of Texas for diversity purposes. 28 U.S.C. §1332(c)(1).

12. Therefore, at the time the State Court Action was commenced, and at the time of Removal, Defendant Roots is, and currently remains, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332(a)(1).

13. Accordingly, there is complete diversity among the parties.

**B. The Amount in Controversy Exceeds \$75,000.00 Exclusive of Interest and Costs**

14. Plaintiff's Complaint does not allege the specific amount of damages it seeks to recover. Upon information and belief, Defendant believes the amount in controversy from Plaintiff's claim and Defendant's counterclaims likely exceed the \$75,000.00 threshold for diversity jurisdiction.

15. When the plaintiff's state court petition does not allege the specific amount of damages, a court may determine that removal is proper if it is facially apparent from the petition that the claims are likely above \$75,000.00. *Allen v. R & H Oil & Gas Company*, 63 F.3d 1326, 1335 (5th Cir. 1995); *see also White v. VCI U.S.A., Inc.*, 319 F.3d 672, 675 (5th Cir. 2003) (to determine the amount in controversy, the court may consider actual damages, exemplary damages and attorney's fees). If the amount in controversy is not apparent from the face of the petition, the court may rely on facts asserted in the removal notice that support a finding of the requisite amount. *Id.* The jurisdictional facts supporting removal must be judged at the time of the removal. *Id.* The defendant may rely on an estimation of damages calculated from the allegations in the complaint. *McPhail v. Deere & Co.*, 529 F.3d 947, 955 (10th Cir. 2008); *See e.g. Lockett v. Delta Airlines, Inc.* 171 F.3d 295, 298 (5<sup>th</sup> Cir. 1999) (even though complaint did not state a specific amount, it was evidence that damages were over jurisdictional amount when complaint sought recovery for property damage, travel expenses, medical bills, pain and suffering, and humiliation).

16. The State Court Action arises out of a dispute concerning Roots' operation and management of five health food and juice bar cafes within five "Equinox Fitness Club" branded health clubs located in Texas. Plaintiff seeks to recover damages pursuant to a Master Operating Agreement. The Master Operating Agreement provides that the Minimum Fee payable to Equinox is: \$500.00 per month for the Preston Hollow Club; \$2,000.00 per month for the Highland Park Club; \$1,200.00 per month for the Plano Club; \$1,800.00 per month for the Austin Club; and \$2,000.00 per month for the River Oaks Club. In addition to the payment of Minimum Fees, the Master Operating Agreement provides for the payment of a Percentage Fee of between eight to ten percent of Gross Sales from each location.

17. Plaintiff alleges Defendant breached the Master Operating Agreement beginning in September 2021. Comp., Ex. B-1, ¶19. Plaintiff alleges the leases for the Preston Hollow Club, Highland Park Club, and Plano Club leases run through February 28, 2022. Comp., Ex. B-1, ¶8. Therefore, Plaintiff is alleging damages of at least **\$22,200.00** for these three leases (( $\$500.00/\text{mo.} + \$2,000.00/\text{mo.} + \$1,200.00/\text{mo.}$ ) \* 6 months (September 2021 through February 28, 2022)). Plaintiff alleges the lease for the Austin Club ran through November 30, 2021. Comp., Ex. B-1, ¶10. Therefore, Plaintiff is alleging damages of at least **\$5,400.00** for the Austin Club lease ( $\$1,800.00/\text{mo.} * 3$  months for September 2021 through November 30, 2021). Plaintiff alleges the lease for the River Oaks Club runs through July 31, 2023. Comp., Ex. B-1, ¶9. Therefore, Plaintiff is alleging damages of at least **\$46,000.00** for the River Oaks Club lease ( $\$2,000.00/\text{mo.} * 23$  months for September 2021 through July 31, 2023).

18. In addition to the payment of Minimum Fees totaling **\$73,600.00**, the Master Operating Agreement provides for the payment of a Percentage Fee of between eight to ten percent of Gross Sales from each location.

19. In addition to the payment of Minimum Fees and Percentage Fee, Plaintiff alleges that Defendant is responsible for all costs and expenses incurred by Plaintiff, including “reasonable attorneys’ fees and expenses.” Comp., Ex. B-1, ¶17. Considering a recent study by Lawyer’s Mutual has found that New York City has the highest attorney fee hourly rate of any city<sup>1</sup>, it is reasonable to estimate Plaintiff’s attorney fees in this matter will exceed \$1,500.00, and more likely \$50,000.00. Plaintiff’s claim for Minimum Fees plus attorney fees cause the amount in controversy to exceed \$75,000.00.

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<sup>1</sup> <https://www.lawyersmutualinc.com/blog/top-10-lawyer-hourly-rates-by-city>

20. Plaintiff also alleges material disruption to Equinox F&B's operations and material damage to Equinox F&B's business reputation. Comp., Ex. B-1, ¶¶29-30. Finally, in addition to attorney fees, Plaintiff seeks to recover "significant damages" including "punitive damages". Ex. B-1, ¶35.

21. In addition to Plaintiff's claims, Defendant will file counter claims in this matter. Defendant seeks to recover at least \$44,000.00 for perishable inventory that Equinox caused to spoil or failed to adequately safeguard. Defendant will also seek to recover equipment wrongfully held by Equinox with a value of at least \$45,000.00. Defendant will also seek to recover its own attorney fees and other damages to which it is entitled.

22. Therefore, considering Plaintiff's claim for Minimum Fees of **\$73,600.00** per year under the Master Operating Agreement (plus the payment of Percentage Fees), reasonably estimated Plaintiff's attorney fee claim of at least **\$50,000.00**, Plaintiff's claim for exemplary damages, Defendant's counterclaims of at least \$89,000.00 for the loss of perishable inventory and wrongfully held equipment plus other damages to which it is entitled, Defendant has established the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

#### **IV. Conclusion.**

23. Because there is complete diversity amongst the parties and the amount in controversy exceeds \$75,000.00, diversity jurisdiction exists and this Court has subject matter jurisdiction over the case.

#### **V. Prayer.**

24. WHEREFORE, pursuant to 28 U.S.C. §§ 1332(a)(1), 1367, 1441 and 1446 and in conformance with the requirements set forth in 28 U.S.C. §1446, Defendant Roots Pressed Juices LLC hereby removes the case styled *Equinox F&B, Inc. v. Roots Pressed Juices LLC*, Index No. 656484/2021, filed in The Supreme Court of the State of New York, County of New York, to the

United States District Court for the Southern District of New York, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully Submitted,

Roots Pressed Juices LLC

By: /s/ Benjamin R. Idziak  
Benjamin R. Idziak

Benjamin R. Idziak, PC  
New York Registration No. 1531029  
Texas Bar No. 10383550  
P. O. Box 671  
Bedford, TX 76095  
Ph. (469) 635-8218  
Email: [bidziak@bmandg.com](mailto:bidziak@bmandg.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2022, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system, which shall send notification of such filing to the following:

(None)

I hereby certify that on January 26, 2022, I mailed the document by United States Postal Service to the following non CM/ECF participants:

LaRocca Hornik Rosen & Greenberg LLP  
Rose Greenberg  
Patrick McPartland  
40 Wall Street, 32<sup>nd</sup> Floor  
New York, NY 10005  
T: (212) 530-4826, 4837  
E: [rgreenberg@lhr gb.com](mailto:rgreenberg@lhr gb.com)  
E: [pmcpartland@lhr gb.com](mailto:pmcpartland@lhr gb.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

EQUINOX F&B, INC.

Plaintiff,

v.

ROOTS PRESSED JUICES LLC

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

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**INDEX OF MATTERS FILED IN STATE COURT ACTION  
PURSUANT TO NOTICE OF REMOVAL**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES, Roots Pressed Juices LLC (“Roots” or “Defendant”), Petitioner for Removal, and make and file this *Index of Matters Filed in State Court Action Pursuant to Notice of Removal* as follows:

The documents filed concurrently with this index include:

1. Exhibit B-1: Summon and Complaint; and
2. Exhibit B-2: Affidavit of Service filed January 11, 2022.
3. Exhibit B-3: Affidavit of Service by Mail file January 20, 2022.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
EQUINOX F&B, INC.

Plaintiff,

- against -

ROOTS PRESSED JUICES LLC,

Defendant.  
-----X

Index No.: \_\_\_\_\_

**SUMMONS**

Plaintiffs designate New York County as the place of trial. The basis for venue is CPLR §501-contractual provisions fixing venue.

To the above-named Defendant:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
November 12, 2021

**LARocca HORNik ROSEN  
& GREENBERG LLP**



Rose Greenberg  
Patrick McPartland  
40 Wall Street, 32<sup>nd</sup> Floor  
New York, NY 10005  
T: (212) 530-4826, 4837  
E: [rgreenberg@lhr gb.com](mailto:rgreenberg@lhr gb.com)  
[pmcpartland@lhr gb.com](mailto:pmcpartland@lhr gb.com)

*Attorney for plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
EQUINOX F&B, INC.

Plaintiff,

Index No. \_\_\_\_\_

- against -

**COMPLAINT**

ROOTS PRESSED JUICES LLC,

Defendant.  
-----X

Plaintiff Equinox F&B Inc. (“Equinox F&B”), by and through its attorneys, LaRocca Hornik Rosen & Greenberg LLP, complaining of the defendant Roots Pressed Juices LLC (“Roots”) sets forth and alleges the following as and for its complaint:

**THE PARTIES, JURISDICTION, AND VENUE**

1. Equinox F&B is a Delaware corporation with its principal place of business situated in the County of New York, and State of New York.

2. Roots is a Texas limited liability company with its principal place of business situated in the County of Dallas, and State of Texas.

3. Jurisdiction and venue are proper in this Court because the parties agreed in writing, before this action was commenced, that any actions arising out of the parties’ Agreement (defined below) shall be brought exclusively in a court of competent jurisdiction, state or federal, located in New York County.

**Background**

4. On or around February 7, 2019, Roots entered into a Master Operating Agreement with Equinox F&B (the “Master OA”), pursuant to which Roots assumed management and

operation of a number of health food and juice bar cafés (each, an “Equinox F&B Café”) within certain “Equinox Fitness Club”-branded health clubs.

5. Specifically, pursuant to the terms and conditions of the Master OA, Roots began operating and managing three Equinox F&B Cafes located, respectively, at 4023 Oak Lawn Avenue Dallas, Texas; 8601-8699 Hillcrest Road, Preston Hollow, Dallas, Texas; and The Shops at Willow Bend, at 6109 West Park Boulevard, Plano, Texas (collectively, the “First Three Equinox F&B Cafés”).

6. On or about September 7, 2019, Roots and Equinox F&B agreed to a written modification of the Master OA (the “First Modification to Master OA”), pursuant to which Roots assumed the operation and management of a fourth Equinox F&B Café located at 4444 Westheimer Road, River Oaks, Houston, Texas (the “River Oaks Equinox F&B Café”).

7. On or about July 6, 2020, Roots and Equinox F&B entered into a second written modification to the Master OA (the “Second Modification to Master OA”; together with the Master OA and the First Modification to Master OA, constituting the “Agreement”), pursuant to which Roots assumed the operation of a fifth Equinox F&B Café located at 1007 South Congress Avenue, Austin, Texas (the “Austin Equinox F&B Café”; together with the First Three Equinox F&B Cafes and the River Oaks Equinox F&B Café, the “Equinox F&B Cafes”).

8. Pursuant to the Agreement, the term for the First Three Equinox F&B Cafes was set to expire on February 28, 2022.

9. Pursuant to the Agreement the term for the River Oaks Equinox F&B Café was set to expire on July 31, 2023.

10. Pursuant to the Agreement, the term for the Austin Equinox F&B Café was set to expire on November 30, 2021.

11. Pursuant to the terms of the Agreement, in consideration for Roots' use of the Equinox F&B Cafés to sell food and beverage items and generate revenue therefrom, Roots covenanted and agreed to pay certain minimum license fees on the first day of each month in the amounts specified in the Agreement.

12. Specifically, Section 4(B) of the Master OA provides that Roots shall pay to Equinox F&B the minimum annual license fee in monthly installments, in arrears, not later than the fifth (5<sup>th</sup>) day of each month (the "Minimum Monthly License Fee") during the term of the Agreement.

13. Roots does not have the right under the Agreement to cease operating and managing the Equinox F&B Cafés or to stop paying the Minimum Monthly License Fees before expiration of the applicable term.

14. Roots was under a duty to operate, control, supervise, manage, and maintain the Equinox F&B Cafes until the expiration of the applicable term.

15. Section I(G) of the Agreement provides that "if Operator shall vacate or abandon the [Equinox F&B Venues] prior to the Expiration Date of the Term, title to [all café equipment] automatically shall vest in Equinox without payment of compensation and Operator confirms that it shall have no further right to any such [café equipment]."

16. Pursuant to Section 6 of the Master OA, Roots' payment obligations with respect to the Minimum Monthly License Fees continue regardless of any purported termination of the Agreement.

17. Pursuant to Section 9 of the Master OA, a defaulting party is responsible for all costs and expenses incurred by the other in connection with seeking to enforce the terms of the Agreement, including, but not limited to, reasonable attorneys' fees and expenses.

18. Pursuant to Section 6 of the Master Operating Agreement, Equinox F&B has the exclusive right terminate the Agreement immediately and without notice to Roots if Equinox F&B “determines in its sole discretion, at any time during the Term that the continued relationship with Operator creates legal risks or liabilities for Equinox.”

**Roots Abandons the Operations of the Cafes**

19. On or about September 2, 2021, Roots precipitously and without any prior notice to Equinox F&B, abandoned operation of the Equinox F&B Café located in Plano, Texas.

20. That same day, Roots unequivocally stated in writing that it was abandoning, vacating, and ceasing operations at all Equinox F&B in thirty days.

21. Neither the Agreement nor any related agreement between Equinox F&B and Roots permitted Roots to cease operations before expiration of the agreed upon term.

22. On the evening of September 2, 2021, Roots’ staff entered into the Plano Equinox F&B Café and unlawfully removed café equipment without notice, consent, or authority.

23. On September 3, 2021, Roots’ staff also entered the River Oaks Equinox F&B and Preston Hollow Equinox F&B Café and unlawfully attempted to take equipment without notice, consent, or authority.

24. On the weekend of September 11, 2021, Roots entered the Highland Park, Texas location and unlawfully removed equipment and locked various cabinets without notice, consent, or authority.

25. Equinox F&B reported these unlawful actions to the police.

26. Equinox F&B repeatedly demanded Roots to cease its unlawful activities, but Roots ignored those demands.

27. As a result of its actions, Roots breached the Agreement.

28. Roots intentionally breached the Agreement and acted with malice, recklessness, and willful disregard by stealing the café equipment.

29. Roots' actions resulted in material disruptions to Equinox F&B's operations.

30. Roots' conduct has materially damaged Equinox F&B's business reputation.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract against Roots)**

31. Paragraphs 1 through 30 are realleged.

32. The Agreement between Equinox F&B and Roots was a valid contract between the parties.

33. Equinox F&B fully performed its obligations under the Agreement.

34. Roots breached the Agreement by its unlawful actions.

35. As a result of Roots' breaches of the Agreement, Equinox F&B has incurred significant damages in an amount to be determined at trial, punitive damages, legal fees, costs, expenses, interest, and such other and further relief as this Court deems just and proper.

**WHEREFORE**, Plaintiff Equinox F&B hereby demands judgment against defendant Roots as follows:

- (a) On the First Cause of Action, awarding damages in an amount to be determined at trial;
- (b) Granting such other relief as the Court deems just and proper.

Dated: New York, New York  
November 12, 2021

**LARocca HORNik ROSEN  
& GREENBERG LLP**



Rose Greenberg  
Patrick McPartland  
40 Wall Street, 32<sup>nd</sup> Floor  
New York, NY 10005  
T: (212) 530-4826, 4837  
E: [rgreenberg@lhr gb.com](mailto:rgreenberg@lhr gb.com)  
[pmcpartland@lhr gb.com](mailto:pmcpartland@lhr gb.com)

*Attorney for plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Attorney: LAROCCA HORNIK ROSEN &  
GREENBERG LLP

EQUINOX F&B, INC.

Plaintiff(s)

- against -

The papers served bore the index # and  
date of filing

Index # 656484/2021

Purchased November 12, 2021

ROOTS PRESSED JUICES LLC

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF TEXAS : COUNTY OF ELLIS ss:

Stephan C. Buskirk BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION. OVER THE AGE OF  
EIGHTEEN YEARS AND RESIDES AT WAXAHACHIE, TX 75165

That on December 29, 2021 at 12:55 PM at

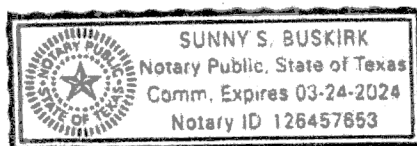
4164 N. CENTRAL EXPRESSWAY  
DALLAS, TX 75204

deponent served the within SUMMONS AND VERIFIED COMPLAINT WITH NOTICE OF ELECTRONIC FILING (MANDATORY) on  
ROOTS PRESSED JUICES LLC therein named.

BY LEAVING A TRUE COPY WITH KATE DELEON, MANAGER, BEING AUTHORIZED TO ACCEPT LEGAL  
PAPERS STATED.

Deponent further states that he describes the person actually served as follows:

Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)
FEMALE	TAN	BLACK	28	5'5	110



Sworn to me on

12/30/2021

Notary

Sunny S. Buskirk

Stephan C. Buskirk  
Server:  
Stephan C. Buskirk  
Invoice #: 776898

UNITED PROCESS SERVICE, INC., 225 BROADWAY, SUITE 440, NEW YORK, NY 10007 - (212) 619-0728 NYCDCA#1102045

EXHIBIT B-2



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Attorney: LAROCCA HORNIK ROSEN &  
GREENBERG LLP

EQUINOX F&B, INC.

Plaintiff(s)

- against -

ROOTS PRESSED JUICES LLC

Defendant(s)

The papers served bore the index # and  
date of filing.

Index # 656484/2021

Purchased November 12, 2021

Mail Date January 3, 2022

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

CHRISTOPHER J. KLEIN BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION, OVER THE  
AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on January 3, 2022 at a regular depository maintained by the United States Post Office deponent mailed a copy of the  
SUMMONS AND VERIFIED COMPLAINT WITH NOTICE OF ELECTRONIC FILING (MANDATORY) to ROOTS PRESSED  
JUICES LLC at

4164 N. CENTRAL EXPRESSWAY  
ATTN: ALL MEMBERS  
DALLAS, TX 75204

Copy was mailed REGULAR FIRST CLASS MAIL, and was marked personal & confidential and not indicating on the outside  
thereof, by return address or otherwise that said notice is from an attorney or concerns an action against the person to be  
served.

Sworn to me on: January 3, 2022

JOSEPH KNIGHT  
Notary Public, State of New York  
No. 01KN6178241  
Qualified In New York County  
Commission Expires November 26, 2023

VINETTA BREWER  
Notary Public, State of New York  
No. 01BR4949206  
Qualified in Bronx County  
Commission Expires April 3, 2023

  
**CHRISTOPHER J. KLEIN**

License #: 1188546

Invoice #: 776896

UNITED PROCESS SERVICE, INC., 225 BROADWAY, SUITE 440, NEW YORK, NY 10007 - (212) 619-0728 NYCDCA#1102045



**LAROCCA HORNICK ROSEN  
& GREENBERG LLP**

COUNSELORS AT LAW

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NEW YORK, NY 10005  
212.530.4823  
212.530.4815 FAX  
LHRGB.COM

FREEHOLD COMMONS  
83 SOUTH STREET  
3RD FLOOR  
FREEHOLD, NJ 07728  
732.409.1144  
732.409.0350 FAX

PRIVATE LENDER GROUP  
212.536.3529  
732.625.2463 FAX

FRANK J. LAROCCA †  
JONATHAN L. HORNICK  
LAWRENCE S. ROSEN  
ROSE GREENBERG †  
AMY D. CARLIN †  
PATRICK MCPARTLAND †  
DAVID N. KITTREDGE †  
JARED E. BLUMETTI  
FAISAL R. LATEEF †  
SANFORD HAUSLER †  
BRYAN A. CHRISTENSON  
JASON W. MOUSSOURAKIS †  
STAN SHAROVSKIY †  
PETER KELEGIAN †  
DREW TANNER †  
LAUREN WEISSMAN-FALK  
ANDREW SELEVAN  
NELSON DIAZ  
DOROTHY BROWN DUNCAN  
† NEW YORK BAR ONLY  
† NEW JERSEY BAR ONLY  
‡ OF COUNSEL ATTORNEYS  
‡ CERTIFIED MATRIMONIAL LAW ATTORNEY

DIRECT DIAL: 212.530.4829  
EMAIL: [RGREENBERG@LHRGB.COM](mailto:RGREENBERG@LHRGB.COM)

January 18, 2022

**VIA REGULAR MAIL**

Roots Pressed Juices LLC  
4164 N. Central Expressway  
Dallas, TX 75204  
Attn: Brent Rodgers

Re: Equinox F&B, Inc. v. Roots Pressed Juices LLC  
Supreme Court, New York County Index No. 656484/21

Dear Sir/Madam:

Pursuant to § 3215 of the New York Civil Practice Law and Rules, we are enclosing an additional copy of the Summons and Complaint previously served on you on December 29, 2021.

Please proceed accordingly.

Very truly yours,



Rose Greenberg

Enclosures:

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/12/2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
EQUINOX F&B, INC.

Plaintiff,

- against -

ROOTS PRESSED JUICES LLC,


Defendant.  
-----X

To the above-named Defendant:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
November 12, 2021

**LARocca HORNik ROSEN  
& GREENBERG LLP**

  
Rose Greenberg  
Patrick McPartland  
40 Wall Street, 32<sup>nd</sup> Floor  
New York, NY 10005  
T: (212) 530-4826, 4837  
E: [rgreenberg@laroccahornik.com](mailto:rgreenberg@laroccahornik.com)  
[pmcpartland@laroccahornik.com](mailto:pmcpartland@laroccahornik.com)

*Attorney for plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

EQUINOX F&B, INC.

Index No. \_\_\_\_\_

Plaintiff,

**COMPLAINT**

- against -

ROOTS PRESSED JUICES LLC,

Defendant.

-----X

Plaintiff Equinox F&B Inc. ("Equinox F&B"), by and through its attorneys, LaRocca Hornik Rosen & Greenberg LLP, complaining of the defendant Roots Pressed Juices LLC ("Roots") sets forth and alleges the following as and for its complaint:

**THE PARTIES, JURISDICTION, AND VENUE**

1. Equinox F&B is a Delaware corporation with its principal place of business situated in the County of New York, and State of New York.
2. Roots is a Texas limited liability company with its principal place of business situated in the County of Dallas, and State of Texas.
3. Jurisdiction and venue are proper in this Court because the parties agreed in writing, before this action was commenced, that any actions arising out of the parties' Agreement (defined below) shall be brought exclusively in a court of competent jurisdiction, state or federal, located in New York County.

**Background**

4. On or around February 7, 2019, Roots entered into a Master Operating Agreement with Equinox F&B (the "Master OA"), pursuant to which Roots assumed management and

operation of a number of health food and juice bar cafés (each, an “Equinox F&B Café”) within certain “Equinox Fitness Club”-branded health clubs.

5. Specifically, pursuant to the terms and conditions of the Master OA, Roots began operating and managing three Equinox F&B Cafes located, respectively, at 4023 Oak Lawn Avenue Dallas, Texas; 8601-8699 Hillcrest Road, Preston Hollow, Dallas, Texas; and The Shops at Willow Bend, at 6109 West Park Boulevard, Plano, Texas (collectively, the “First Three Equinox F&B Cafés”).

6. On or about September 7, 2019, Roots and Equinox F&B agreed to a written modification of the Master OA (the “First Modification to Master OA”), pursuant to which Roots assumed the operation and management of a fourth Equinox F&B Café located at 4444 Westheimer Road, River Oaks, Houston, Texas (the “River Oaks Equinox F&B Café”).

7. On or about July 6, 2020, Roots and Equinox F&B entered into a second written modification to the Master OA (the “Second Modification to Master OA”; together with the Master OA and the First Modification to Master OA, constituting the “Agreement”), pursuant to which Roots assumed the operation of a fifth Equinox F&B Café located at 1007 South Congress Avenue, Austin, Texas (the “Austin Equinox F&B Café”; together with the First Three Equinox F&B Cafes and the River Oaks Equinox F&B Café, the “Equinox F&B Cafes”).

8. Pursuant to the Agreement, the term for the First Three Equinox F&B Cafes was set to expire on February 28, 2022.

9. Pursuant to the Agreement the term for the River Oaks Equinox F&B Café was set to expire on July 31, 2023.

10. Pursuant to the Agreement, the term for the Austin Equinox F&B Café was set to expire on November 30, 2021.

11. Pursuant to the terms of the Agreement, in consideration for Roots' use of the Equinox F&B Cafés to sell food and beverage items and generate revenue therefrom, Roots covenanted and agreed to pay certain minimum license fees on the first day of each month in the amounts specified in the Agreement.

12. Specifically, Section 4(B) of the Master OA provides that Roots shall pay to Equinox F&B the minimum annual license fee in monthly installments, in arrears, not later than the fifth (5<sup>th</sup>) day of each month (the "Minimum Monthly License Fee") during the term of the Agreement.

13. Roots does not have the right under the Agreement to cease operating and managing the Equinox F&B Cafés or to stop paying the Minimum Monthly License Fees before expiration of the applicable term.

14. Roots was under a duty to operate, control, supervise, manage, and maintain the Equinox F&B Cafes until the expiration of the applicable term.

15. Section I(G) of the Agreement provides that "if Operator shall vacate or abandon the [Equinox F&B Venues] prior to the Expiration Date of the Term, title to [all café equipment] automatically shall vest in Equinox without payment of compensation and Operator confirms that it shall have no further right to any such [café equipment]."

16. Pursuant to Section 6 of the Master OA, Roots' payment obligations with respect to the Minimum Monthly License Fees continue regardless of any purported termination of the Agreement.

17. Pursuant to Section 9 of the Master OA, a defaulting party is responsible for all costs and expenses incurred by the other in connection with seeking to enforce the terms of the Agreement, including, but not limited to, reasonable attorneys' fees and expenses.



18. Pursuant to Section 6 of the Master Operating Agreement, Equinox F&B has the exclusive right terminate the Agreement immediately and without notice to Roots if Equinox F&B “determines in its sole discretion, at any time during the Term that the continued relationship with Operator creates legal risks or liabilities for Equinox.”

**Roots Abandons the Operations of the Cafes**

19. On or about September 2, 2021, Roots precipitously and without any prior notice to Equinox F&B, abandoned operation of the Equinox F&B Café located in Plano, Texas.

20. That same day, Roots unequivocally stated in writing that it was abandoning, vacating, and ceasing operations at all Equinox F&B in thirty days.

21. Neither the Agreement nor any related agreement between Equinox F&B and Roots permitted Roots to cease operations before expiration of the agreed upon term.

22. On the evening of September 2, 2021, Roots’ staff entered into the Plano Equinox F&B Café and unlawfully removed café equipment without notice, consent, or authority.

23. On September 3, 2021, Roots’ staff also entered the River Oaks Equinox F&B and Preston Hollow Equinox F&B Café and unlawfully attempted to take equipment without notice, consent, or authority.

24. On the weekend of September 11, 2021, Roots entered the Highland Park, Texas location and unlawfully removed equipment and locked various cabinets without notice, consent, or authority.

25. Equinox F&B reported these unlawful actions to the police.

26. Equinox F&B repeatedly demanded Roots to cease its unlawful activities, but Roots ignored those demands.

27. As a result of its actions, Roots breached the Agreement.



28. Roots intentionally breached the Agreement and acted with malice, recklessness, and willful disregard by stealing the café equipment.

29. Roots' actions resulted in material disruptions to Equinox F&B's operations.

30. Roots' conduct has materially damaged Equinox F&B's business reputation.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract against Roots)**

31. Paragraphs 1 through 30 are realleged.

32. The Agreement between Equinox F&B and Roots was a valid contract between the parties.

33. Equinox F&B fully performed its obligations under the Agreement.

34. Roots breached the Agreement by its unlawful actions.

35. As a result of Roots' breaches of the Agreement, Equinox F&B has incurred significant damages in an amount to be determined at trial, punitive damages, legal fees, costs, expenses, interest, and such other and further relief as this Court deems just and proper.

**WHEREFORE**, Plaintiff Equinox F&B hereby demands judgment against defendant Roots as follows:


- (a) On the First Cause of Action, awarding damages in an amount to be determined at trial;
- (b) Granting such other relief as the Court deems just and proper.

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/12/2021

Dated: New York, New York  
November 12, 2021

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NYSCEF DOC. NO. 3

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